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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 695

GEORGE EDWARD SHELIFANT,

Petitioner,

—against—

THE SHERIFF OF THE CITY OF NEW YORK

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

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To: The Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioner prays that a writ of certiorari issue to review the judgment and decree of the Court of Appeals of the State of New York, entered July 8, 1959, which affirmed a decree of the Supreme Court of the State of New York, Appellate Division, Second Department, dismissing a writ of Habeas Corpus issued in behalf of petitioner so that he might determine the legality of his commitment by the County Court, Kings County, on February 17, 1959, adjudging him guilty of a criminal contempt of court.

Citations to Opinions Below

The opinion of the County Court (R. 48) is unreported. The Supreme Court of the State of New York, Appellate Division, Second Department, dismissed the writ without opinion (R. 60). The opinions of the Court of Appeals, set forth in Appendix B hereto; *infra*, p. 1b are reported in 6 N. Y. 2d 487, 190 N. Y. S. 2d 641.

Jurisdiction

The judgment and decree of the Court of Appeals of the State of New York was entered July 8, 1959 (R. A.). Rehearing was denied on October 22, 1959 (R. A.). That the time of the petitioner to file this petition was extended to February 15, 1960, by order dated January 25, 1960, granted by Honorable John M. Harlan, Associate Justice of this Court. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1257 (3). The federal question sought to be reviewed was first raised in the petition filed with the Supreme Court, Appellate Division, Second Department for the issuance of the writ of habeas corpus, as follows:

> "13. That the imprisonment and restraint of petitioner is illegal and unlawful, and in violation of Article 1, Section 6 of the Constitution of the State of New York, the 14th Amendment to the Constitution of the United States, * * *." R. 40.

The question was also raised in the briefs and upon the argument before the Court of Appeals, and was

rejected by that court as certified in the amended remittitur as follows:

> "Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, as follows:
>
> Appellant contended that the use of the questionnaire during the grand jury proceedings was a violation of his rights under the Fourteenth Amendment in that it deprived appellant of due process of law. The Court of Appeals held that appellant was not denied due process under the Fourteenth Amendment."

Appendix C, *infra*, p. 1c.

Question Presented

May a state grand jury compel a witness before it to marshal and collate, outside the grand jury room, information concerning his financial status, insert such information in a questionnaire furnished him for that purpose and to submit it at a later date as part of his testimony under oath?

Constitutional Provision Involved

The Constitutional provision involved is the Fourteenth Amendment, section 1; the statutes involved are New York Code of Criminal Procedure, sections 248 and 249, 251 and 389; New York Judiciary Law, section 750. They are set forth in Appendix A, *infra*, pp. 1a-2a.

Statement

Petitioner, a plastering inspector of the Department of Buildings of the City of New York, was summoned as a witness before the Grand Jury of the County of Kings, then engaged in a general exploratory investigation to determine whether crimes of graft and corruption were being committed by personnel of the Department. In accordance with the mandate of certain statutes petitioner executed a waiver of immunity, was sworn by the foreman of the grand jury, and proceeded to testify, answering all oral questions asked of him (R. 8-9). The prosecutor then gave him a questionnaire concerning his finances, asked if he were willing to take it home, fill it out completely, and return with it to the grand jury on a later date, and swear that his answers therein were true. When he declined to do so, although he offered to answer all questions put to him by, or before, the grand jury orally, he was held in contempt. A jail sentence of thirty days and a fine of $250. were thereupon imposed upon him (R. 10-13).

Petitioner thereupon obtained a writ of habeas corpus from the Supreme Court of the State of New York, but upon the hearing thereon the writ was dismissed, and the adjudication of contempt upheld (R. 5-7). On appeal to the Court of Appeals of the State of New York, the determination was also affirmed by a divided court. In spite of petitioner's claim that by the written questionnaire method he was compelled to manufacture and produce evidence, not only concerning his own innocence, but the financial affairs of his spouse, his children and other rela-

tives, despite the fact that there was no proof of his guilt, or even the claim of a suspicion thereof, the majority of the court held that since no statute forbade the use of a questionnaire, public expediency dictated the approval thereof—that the public was "entitled to an accounting by their public servants of the public employee's financial assets for the purpose of ascertaining whether there is graft or corruption or misfeasance in office by these public servants." The minority view—three judges—was that approval of the "questionnaire method" constituted judicial legislation, and was an improper enlargement of the procedural and evidentiary powers of the grand jury. The respective opinions of the majority and minority of the court below are set forth in full in Appendix B, *infra*, p. 1b.

Reasons for Granting the Writ

1. The decision of the court below patently requires a witness before the grand jury not only to truthfully divulge that which may be sought by his oral interrogation before the grand jury, but to present on his own initiative, and pursuant to the command of that investigative body, proofs which would demonstrate his innocence of any wrongdoing. Such a course would effectively destroy the presumption of innocence—a fundamental in our concept of justice—with which all persons are endowed under our system of jurisprudence. In addition, and in effect, confirmation of the decision below will remove from the state the burden of establishing guilt on the part of the witness being examined, and, instead, place upon the witness the burden of establishing, by the